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| 10/758,472      | 01/15/2004  | S. Jabri             | 29799/39174         | 5870             |

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EXAMINER

KILKENNY, PATRICK J

ART UNIT PAPER NUMBER

3732

DATE MAILED: 10/18/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/758,472

Applicant(s)

JABRI, S.

Examiner

Patrick J. Kilkeny

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 31 July 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-22 is/are pending in the application.
- 4a) Of the above claim(s) 10, 11 and 19-22 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-9 and 12-14 is/are rejected.
- 7) ☒ Claim(s) 15-18 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 1/15/2004 is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)          | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

## DETAILED ACTION

### *Election/Restrictions*

Claims 10-11 and 19-22 have withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on 7/31/2006.

### *Claim Rejections - 35 USC § 112*

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claim 5 is rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. According to the specification, page 6, line 15: "The middle section 11 may be equipped with a portion 14 of dental composite material as shown in Fig. 4 for the reasons explained below." The specification makes no future reference to this. It does however, go on to disclose using dental composites not directly attached to the matrix band for performing dental restorations, which is known in the art. It is unclear what is meant by when it is claimed, "...portion of the matrix band is *attached* to a pre-cured dental

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composite material.” It has not been disclosed why this is beneficial to traditional methods, or more importantly, the method in which this would be useful at all considering it is impossible to know the needed amount of composite prior to any restoration.

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 2 and 3 rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. With regard to claims 2 and 3, they claim that the legs are extensions of the straddle *and* the proximal end of the arms. The relationship between the legs and the straddle and arms needs to be more clearly defined.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-4, 7-9, and 12-14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Galler (4,718,852). Galler discloses a device for retaining a filing material during repair of a cavity, the device comprising a straddle (45) extending transversely between two parallel arms (40 and 41), and each arm being connected at a proximal end to the straddle and at a distal end to a wedge (43 and 44). The wedges

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are tapered and face towards each other so when the device is installed the wedges are frictionally inserted between adjacent teeth (Fig. 11). There is also a leg (51 and 58) attached to each arm for receiving the loop ends (50a and 50c) of a matrix band (50). The legs are generally perpendicular extensions of the ends of the arms. The matrix band is positioned so that it extends from one leg to the other along the arms and around the wedges (Fig. 16). Galler discloses that it is common for matrix bands to be made of metal or plastic (Column 3, lines 54-62). There is also a tab (41 and 41a) that attaches to each arm and provides a gripping surface for a tool to install or remove the device from a patient's mouth. The tabs are opposite the respective arm from the wedges.

Galler does not disclose that the legs are attached to the proximal end of the arms or extending from the saddle. However it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the legs of Galler by rearranging them on the proximal end of the arm or extending them from the saddle, since it has been held that rearranging parts of an invention involves only routine skill in the art. *In re Japikse*, 86 USPQ 70.

Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over Galler as applied to claim 1 above, and further in view of Meyer (6,325,625). Galler does not disclose that the matrix band has a profile that includes a thicker lower edge than an upper edge with a tapered profile there between. Meyer discloses a dental separator and matrix with tapering profile (42b). Therefore, it would have been obvious to modify the matrix profile of Galler so that is more tapering, as taught by Meyer, so the matrix

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band would better fill the tapering space from the gum line to the occlusal surfaces of the interproximal space it fills.

### ***Allowable Subject Matter***

Claims 15-18 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

### ***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. See PTO-892 for prior art of record. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Patrick J. Kilkenny whose telephone number is (571) 272-8684. The examiner can normally be reached on Mon-Fri, 8-5:30.


If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Chris Rodriguez can be reached on (571) 272-4964. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Patrick J. Kilkenney



CRIS L. RODRIGUEZ  
PRIMARY EXAMINER